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CHARGE  
TO THE  
GRAND JURY  
OF THE  
COUNTY of MIDDLESEX.

DELIVERED

At the General Quarter Session of the Peace,  
holden at HICK'S HALL in the said County,  
on Monday the Eighth Day of January 1770.

By JOHN HAWKINS, Esq.

One of His Majesty's Justices of the Peace for  
the said County, and CHAIRMAN of the Court  
of Quarter Session for the same.

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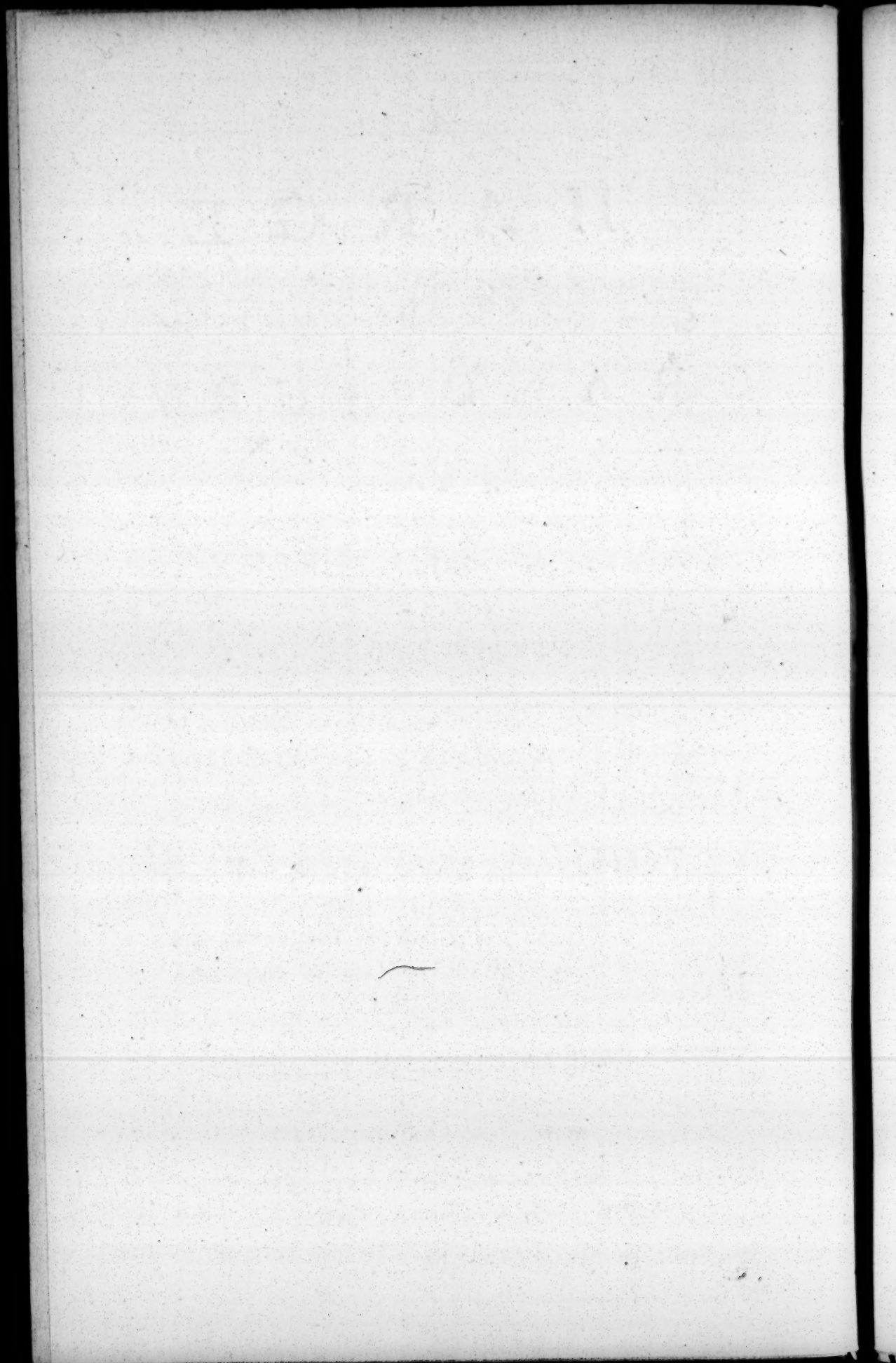
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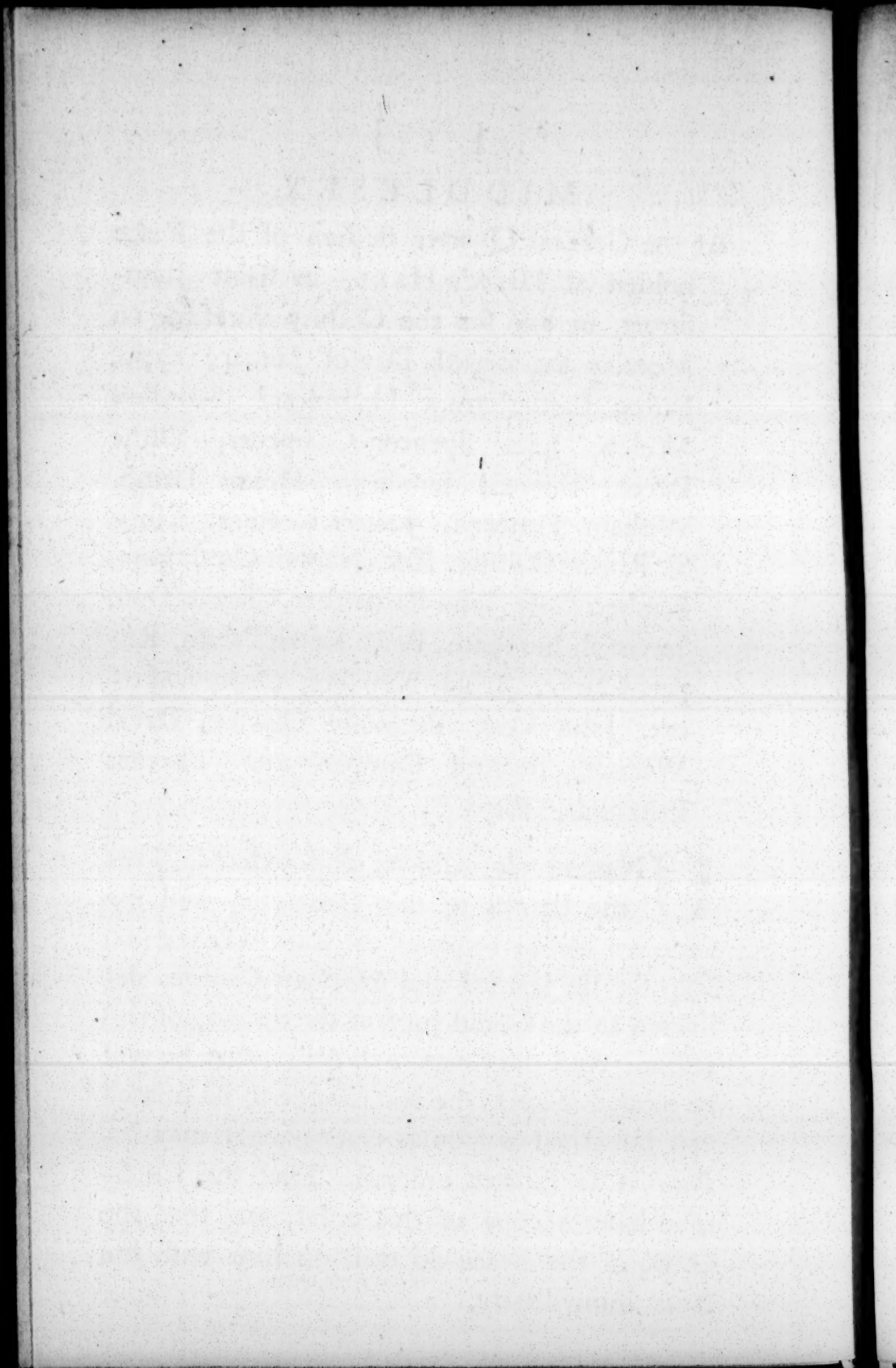
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## MIDDLESEX.

At the General Quarter Session of the Peace holden at HICK'S-HALL, in Saint John-Street, in and for the County aforesaid, on Monday the Eighth Day of January 1770, before Bartholomew Hammond, Saunders Welch, John Spencer Colepeper, Elisha Biscoe, Edward Jennings, Henry Lamb, William Timbrell, Joseph Keeling, Esqrs. Sir Robert Darling, Knt. Nathan Carrington, Stephen Cole, John Barnfather, Charles Dod, Jeremiah Bentham, Peter Lewis Perrin, Rupert Clarke, Joseph Newsom, George Mercer, John Cox, Benjamin Cowley, David Wilmot, Burford Camper, and Thomas Edmonds, Esqrs.

**U**Nanimously resolved and ordered, That the thanks of this Court be, and the same are hereby returned to JOHN HAWKINS, Esq; for his learned and excellent Charge, delivered to the Grand Jury, at the opening of this session. And the Court doth desire, that he will be pleased to cause the said Charge to be printed and published as soon as conveniently may be. And it is further ordered, That the Chairman have a copy of this order, and that the Clerk of the Peace do wait on him with the same immediately.





To the Worshipful

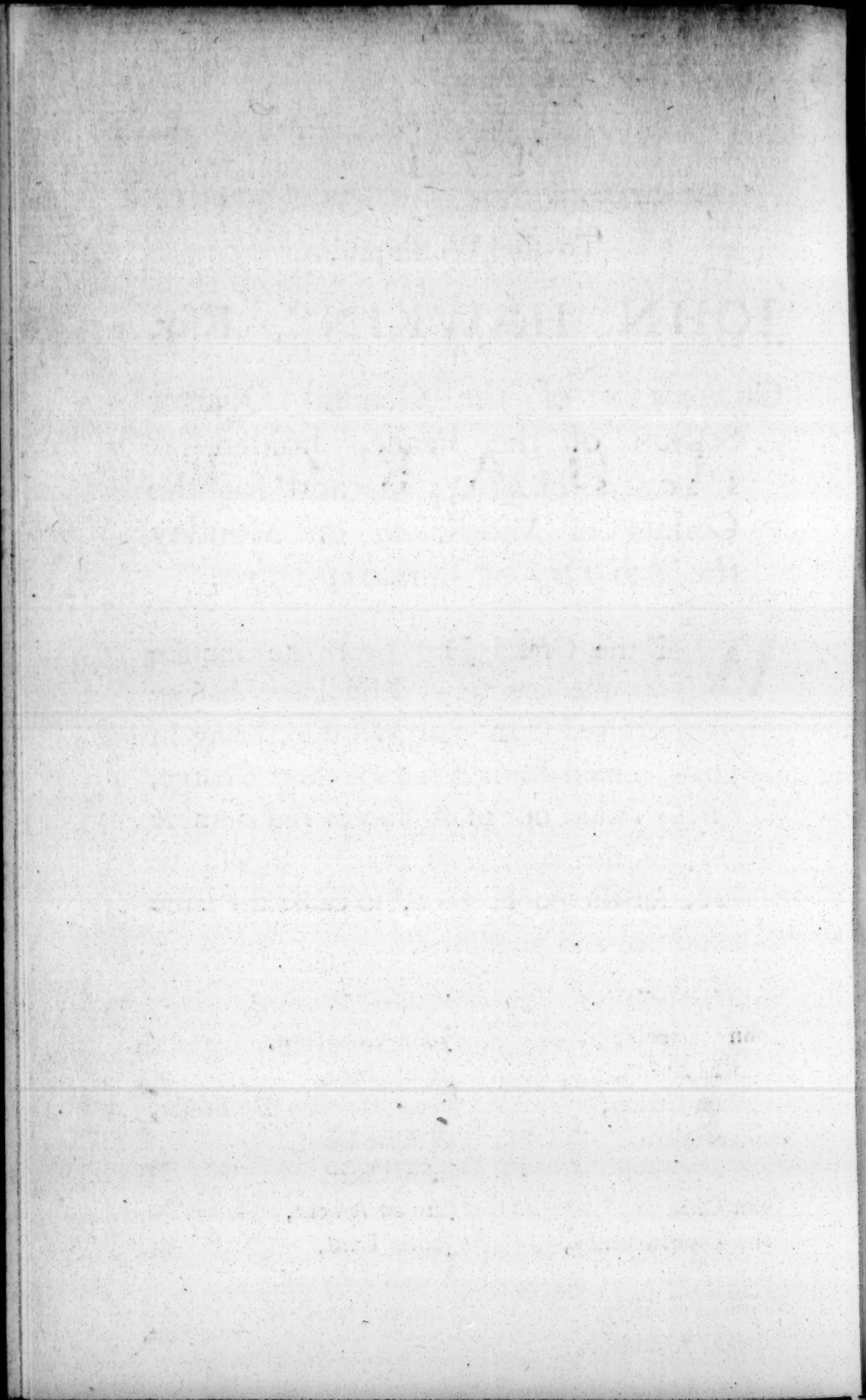
**JOHN HAWKINS, Esq;**

CHAIRMAN of the General Quarter  
Session of the Peace, holden at  
HICK'S-HALL, in and for the  
County of Middlesex, on Monday  
the 8th Day of January, 1770.

**W**E the Grand Jury sworn to inquire  
for the county of Middlesex, having  
this day received from your Worship, being in  
the chair, a most learned and excellent Charge,  
do hereby return our most sincere and humble  
thanks for the same, and pray, you will be  
pleased, for the public good, to cause the same  
to be printed and published.

Sampson Jessop,  
John Tuach,  
John Marneau,  
William Collier,  
Samue. Dean,  
Robert Miller,  
John Chant,  
John Clothworthey,  
John Inman,  
William Bradley,  
Richard Jenkinson,

William Worland,  
John Goodbern,  
John Dean,  
Peter Abraham De Brissac,  
William Benn,  
John Cater,  
Samuel Ament,  
James Lard,  
Robert Leblond,  
Samuel Flaxmore.



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A  
C H A R G E  
TO THE  
G R A N D J U R Y  
OF THE  
COUNTY of *MIDDLESEX*.

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*Gentlemen of the Grand Jury,*

**Y**OU are chosen out of the body of this county, and called upon to the discharge of a duty, which, as it is of great importance to the lives, the liberties, and properties of your fellow-subjects, is highly worthy of your most serious attention.

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The law of this country, founded as it is in wisdom and justice, improved by the accumulated experience of many ages, and favourable to the liberties of the subject in a degree that admits of no comparison with the laws of other countries, has given to you a primary and original jurisdiction in criminal matters; and, except in some particular cases, where the complaint is made to a superior court of criminal judicature, has postponed all enquiry touching the delinquency of such as offend against it, to the presentment of a Grand Jury.

And in this institution we may discern the equity and moderation with which the law of this country distinguishes between civil and criminal causes. In the former, which draw into question the title to a man's estate, or subject him to a demand of reparation in damages for meer personal injuries, the delinquent is immediately called upon to answer the charge of his adversary; and this, though the subject matter of it be ever so groundless, frivolous, or vexatious. But in criminal matters the case is otherwise; for over and above the advantages which the law reserves to the person accused upon a trial by his peers, his neighbours, and possibly



possibly his friends, it has exempted him from the necessity of vindicating his own innocence, until you, by your presentment, shall have pronounced, not only that the offence wherewith he is charged is cognizable by law, (that is to say, either against the public peace, or prohibited by some statute,) but that the same is substantially true. In this presentment of yours a majority must concur, and the law has farther provided, that that majority shall at least be twelve ; so that before the person accused can be convicted, two juries must pass upon him, making together twenty-four persons ; one to ascertain the relevancy, and the other to determine the merits of the charge.

Such, in a general view of it, is the authority with which you are invested ; to the faithful execution whereof, it is hoped, you will need no other incentives than your regard for the public, and that respect which all reasonable men are disposed to pay to the laws of their country, and the government that protects them.

In the discharge of this your duty, reason and justice require you to lay aside all party

distinctions, local attachments and prejudices; and, in short, whatever else might tend to fix a bias on your judgments; and this not so much because you are by your oath restrained from presenting any thing *for malice or evil will*; and obliged *not to leave any thing not presented for love, favour, affection, reward, or any hopes thereof*, but because it would be wrong, repugnant to the first principles of natural justice, nay, offensive to the Divine Being itself, to do otherwise. And here it may be necessary to mention, as well for the information of yourselves as others, that there is an antecedent obligation on all men, independent of oaths and promises, to act agreeable to the dictates of truth and justice; and that tho' your oath may *super-add to*, it does not *create*, the obligation you are under to acquit or condemn according to the evidence, which from time, shall be produced to you.

The offences properly cognizable by you, are either capital, which are punishable by loss of life and forfeiture of goods; or finable, which subject the offender to imprisonment, and a discretionary fine, proportionable to the nature and degree of his offence.

Under

Under the first head of this division are comprehended the crime of treason; which is of two kinds, that is to say, high-treason and petit-treason; and felonies, which are divers, some at the common law, and others by statute. And so extensive is your authority, that every species of offence, from high-treason down to trespass, which is the smallest infraction of the public peace punishable by our laws in a criminal way, are equally within your jurisdiction.

The security in which his majesty holds his crown, the mildness of his government, and his own regal and private virtues, have removed to a great distance the probability that that species of high treason, which consists in the compassing or imagining the death of the king, the queen, or the prince, their eldest son and heir, or the levying war against the king, will ever come in judgment before you. However, an offence less atrocious, it is true, but very mischievous in its consequences, namely, that of libelling his ministers, and arraigning his councils, may possibly be subjected to your enquiry; in the course whereof you will do well to consider, that for all misbehaviour of persons in office,



as well the king's ministers, as others, the constitution has provided a sufficient remedy, by making them responsible at a proper tribunal; and that the publication of written and printed slander has no better a tendency, than to lessen that confidence in the wisdom and integrity of those, who have the direction of the public councils, which it is as much their interest to merit as to possess.

This, in the eyes of some persons, may seem a small evil; and to justify the practice of libelling, it may possibly be urged, that every subject in this kingdom has a right to censure the conduct of those employed in the administration of government. But admitting such a right, does it include in it the idea of power and ability sufficient for the exercise of it? Before a man presumes to form a judgment on the act of another, in all reason let him thoroughly understand the motives to, and the ends of it: this is what is required in the common occurrences of life; and how less than a competent knowledge of the subject can be sufficient to qualify a man to judge of the operations of government, or the characters or abilities of those employed in the business of it, it is hard to con-



conceive. If this be the case, and a certain degree of skill in the constitution of this country, its laws, its history, its connexions, and its interests, be necessary, as most assuredly it is, to enable a man to form an adequate judgment of the conduct of those, who, from time to time, have the direction of its councils, the exercise of this liberty, which is so loudly contended for, must necessarily be confined to a very few.

But supposing a person possessed of all the knowledge requisite for the above purpose; supposing him to be what almost every man now affects to be thought, a consummate politician, is such a one under no restraint in this respect; shall he excite jealousies in the minds of his fellow subjects; shall he traduce and villify, not only blameless, but respectable characters; shall he blow the trumpet of faction, and sound an alarm to rebellion with impunity? Let the law answer this question, and declare, as it does by the mouths of its oracles, that libelling is a great offence, as it tends to the breach of the peace<sup>a</sup>; that every libel made against a private person merits a severe punishment, because it provokes all the family of  
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<sup>a</sup> 12 Co. 3; Edwards v. Wootton.

that person to revenge; that if it be against a magistrate, it concerns not only the peace, but it scandalizes the government; that a libeller is punishable by indictment at common law, and that according to the greatness of the offence, either by fine and imprisonment, or by the pillory<sup>b</sup>; that not only the writer, but the publisher of a libel, is liable to this punishment<sup>c</sup>; and that in a prosecution for a libel, the law considers, not whether the person libelled be of good fame or not, nor whether the subject matter of the libel be true or false, but will punish the libeller even though it be true<sup>d</sup>.

These arguments are adduced to shew, as well the iniquity as the unreasonableness and danger of the practice of libelling. Attend to others of a more serious nature.

We have lived to see the time when all the uneasinesses arising from a disputed title to the crown of this realm, and all apprehensions of a change in the national religion, are happily subsided. Our enemies abroad are reduced in their numbers, and in their power to hurt us.

No-

<sup>b</sup> 5 Co. 125. The case de libellis famosis.

<sup>c</sup> 9 Co. 59. b. Lamb's case. Moor 813. S. C.

<sup>d</sup> 5 Co. 125.

Nothing can afford them so strong a temptation to disturb the tranquility we at this time enjoy, as the prevalence of faction among us; and nothing has so great a tendency to promote faction, as the uncontrouled licence of the press, and the liberty of uttering sedition and defamation with impunity.

The crime of Treason, the first general head in the above division of offences, is branched out into many particulars, other than those already mentioned; as namely, to adhere to the enemies of the King, to counterfeit his great, or privy seal, or the current coin of the realm: these, and some other offences, are high treason. There is yet another species of treason, which the law calls petit-treason; and this is defined to be homicide committed on a subject, between whom and the offender the law supposes a special obedience and subjection; as from the wife to her husband, from a servant to his master, or from a clerk to his bishop or diocesan. These, in a general view of them, make up the whole of the offences included in the general appellation of Treason.



Felonies, which are the second species of capital offences, are murder, robbery, burglary, larceny, and other crimes, sufficiently understood, either as being so declared by the common law, or enacted by statute.

The second class of offences comprehends those that subject the offender to fine and imprisonment; and these are either against public justice, or the King's peace, or the profit or health of his subjects; among which are perjury, bribery, extortion, maintenance, riots, routs, and unlawful assemblies and combinations; assaults, and other injuries to the persons of individuals; forestalling, regrating, and ingrossing; frauds and deceits of tradesmen, artificers, and such as prepare or sell unwholesome food. Under this general head are also included nuisances, which consist in acts either injurious to the ease, the health, or the morals of the people: such are annoyances and obstructions in the public streets and highways, the exercise of noxious trades and businesses in particular places, and the keeping of houses for the purposes of lewdness.



In this cursory enumeration of offences cognizable by you, you cannot but discern some, which, at this time, demand your particular attention. You whose habitations are mostly in the eastern part of this county, need not be told, that it is the seat of a manufacture, which has long afforded the means of a comfortable subsistence to thousands. In consequence of the encouragement it has met with, those habits of industry and parsimony, which attended its introduction into this kingdom, have given way to a spirit of licentiousness, which has manifested itself in outrages of the most daring kind ; combinations have been formed, contributions exacted, houses have been entered and plundered ; manufactures, and the engines employed in carrying them on, destroyed ; fire and destruction have been threatened to individuals ; and this under pretence of promoting the interests of the inferior manufacturers, whose success in these their illegal attempts would be their ruin.

The general flourishing state of the manufacture now spoken of, the rate of wages paid to the workmen employed therein, dis-

proportionably greater than most other artificers require ; and, above all, the indulgence which the legislature has, from time to time, shewn to this exotic manufacture, by restraining, not to say prohibiting, the wear of foreign commodities, have left these men without any reasonable cause of complaint. And in this state of things you will see the necessity of punishing the promoters of illegal combinations, and such as take a part in riots and unlawful assemblies ; the *ultimum supplicium*, the utmost punishment, has been inflicted, the judgment of the law has been executed on such of the capital offenders in this way, as the hand of justice could reach ; this court has exerted its authority in the punishment of some who have been found guilty in a less degree ; and it now remains to see, whether the sacrifices which have been made to public justice, will restore to such of this body of manufacturers, as are disposed to be peaceable, the liberty of maintaining themselves and their families by their own honest labour and industry.

Injuries to the persons of the King's subjects, by assaults or battery, are the lowest offences subject to your enquiry. These partake in a  
great

great measure of the nature of civil actions, inasmuch as the fine upon conviction, though nominally given to the King, is in most instances imposed with a view to a pecuniary satisfaction to the injured party ; and though in many cases the injury complained of, may be so small as hardly to entitle the sufferer to a recompence, yet where the fact is proved to your satisfaction, it will be safer for you in respect of your oath, and more for the public benefit, by finding the bill, to subject the matter to a farther enquiry, than to discharge the injured party without his remedy. The reason of this is, that in the case of assaults the hope of redress from the law suspends the emotions of revenge. In other countries, a blow is frequently returned with a stab ; and in this, were it not for the wise provision of the law, and that generous spirit discernable even among the lowest of our people, indictments for assaults would be less frequent than for mayhem or murder.

Of nuisances none will appear to be more worthy of your notice, than those that have a tendency to corrupt the manners of youth. Such are gaming houses, and places of lewd resort. In these the habits of idleness and debauchery are first contracted, connections of the worst kind are formed,



formed, and all the ends of a virtuous education frustrated.

Over and above the power to punish the offences already enumerated, the law and the constitution of this country have in a great measure intrusted to you the care of Religion ; the importance of which you will easily conceive, when you are told, that civil sanctions have long been found too weak to restrain men from violence, and that without the belief of a God, of Providence, and a future state, society could no way subsist.

It is for these reasons that public seminaries are instituted, and a peculiar order of men exempted from the necessity of secular pursuits, the better to qualify them for the employment of public instructors ; all which care would be to little purpose, were religion left exposed to that insult and contumely, with which some have taken the liberty to treat it ; and it is for this reason that the legislature, after declaring christianity to be part of the law of the land, has invested you with a power to controul and check that licentious and daring spirit, which leads men to deny its authority, or controvert its precepts,



precepts, and by consequence to weaken, if not dissolve, the bonds of society.

In all the provisions which the law has made for the establishment of a national religion, and the guarding it from insult, such a latitude is allowed for private judgment, and such is the indulgence given to scrupulous minds, that no man is left to complain that the rights of conscience are in any degree violated, excepting those, who profess a religion subversive of the constitution of this country, and which, for that reason, has not the least claim to a toleration.

Taking then the religion of this country to be such as the law has made it, it is the duty of the civil magistrate to promote its interests, and it is yours also, under the authority of particular statutes, to put into a course of punishment all such, as by writing, printing, teaching, or advised speaking, deny the existence of God, or assert that there are more than one, or that deny the truth of the christian religion, or the authority of the scriptures, or that shall revile the sacraments, or speak in derogation of the book of common-prayer<sup>e</sup>, farther, and for reasons of a political nature, and  
which

<sup>e</sup> 9. and 10. W. III. cap. 32. 1. Edw. VI. cap. 4. 1. Eliz. cap. 2. §. 9.

which enter not into the truth of its doctrines. The law has made it highly penal to exercise the Romish religion in this country, and has subjected those to severe punishments who shall endeavour to spread the infection of popery, and thereby alienate the minds and affections of the people from their rightful sovereign.

The frequency of sessions in this county, and the means of information which, as being resident therein, you severally have in your power, touching the nature and extent of your authority, make it unnecessary to be more particular in the enumeration of the several matters cognizable by you as a Grand Jury. But as the nature of your office, and indeed the terms of your oath, require that your presentments be agreeable to truth, which can only be discerned by means of the evidence produced before you, it may not be amiss to give you some information touching the nature and kind of evidence which the law requires as the ground and foundation of your judgments. And this is the more necessary, as an opinion has of late been propagated with a degree of confidence that would disgrace even truth itself, namely, that *the same degree of evidence is necessary to warrant a Grand Jury to find*

*a bill of indictment, as would justify a petit Jury to find a verdict against the prisoner.*

And first, that you may understand the nature of an indictment, you are to know, that it is an enquiry, finding some offence against the king ; that it is the king's action, whereupon the party shall be arraigned and put to answer, and tried, by another jury, and that every strong suspicion of such an offence, though it be felony, appearing on record, hath the force of an indictment. <sup>f</sup>

And next it is to be observed, that an indictment <sup>g</sup> is no part of the trial of any offence, neither is the presentment thereof by the Grand Jury, in

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the

<sup>f</sup> *Babington's Advice to Grand Jurors in Cases of Blood, 82. Finch of Law, 25.*

<sup>g</sup> An indictment is no part of the trial, but an information, or declaration, for the king ; and the evidence of witnesses to a Grand Jury is no part of the trial ; for by law the trial in that is, not by witnesses, but by verdict of twelve men, and a manifest diversity between the evidence to the Jury, and a trial by a Jury. If the indictment were part of the trial, then ought he that is a nobleman, and lord of parliament, to be indicted by his peers ; but the indictment against a peer of the realm is always found by freeholders, and not by peers. 3. Inst. 26.—Vide also 1. inst. §. 194.—*Fortesc. de laudib. cap. 26.*—*Staundf. Plees del Coron. Lib. 2. fo. 90.*



the language of the law, ever termed a *verdict*; the consequence whereof is, that an enquiry by a Grand Jury is not of necessity to be directed by those rules of evidence which the law has prescribed in the case of a trial by a petit Jury; and it is no derogation from your authority to say, that a petit Jury may *extenuate* an offence, and make it less than you, by your presentment, shall have found it.<sup>b</sup> In short, it is your office to *inquire of*, and that of the petit Jury, to *try* the fact; and for the former of these purposes, *probable* evidence is not only sufficient, but it is all that the law requires, as the foundation of a presentment by a Grand Jury.<sup>i</sup>

The arguments that have been adduced in favour of the contrary notion, either prove nothing, or they prove too much. Of the first sort are

<sup>b</sup> Sir James Astry's general charge to Grand Juries, 15. 21.

<sup>i</sup> Advice to Grand Jurors in cases of blood, 16, 63, 125. et passim.—Sir James Astry's general charge to Grand Juries, 14.—*Billa vera* is the indorsement of the Grand Jury, upon any presentment or indictment which they find to be *probably* true, *Terms de la ley*.—*Delationem aut in iudicium postulationem nihil aliud esse quam duodecem virorum prejudicium quod finem tamen principali negotio nullum affert, sed conjecturam aut opinionem verius, quo circa de absentibus etiam inquiritur et de noncitatis. Tho. Smith, de Repub. Anglor. Lib. ii. cap. 26.*—State Trials, Vol. iii. 416. Vol. v. 3.

are those, for which no other authority is produced than the opinion of certain *most approved*, but anonymous *lawyers*; of the latter, are those that represent it as *shocking to humanity to see an innocent person brought to his trial for an offence without almost any evidence to support the charge.*

It is doing too much honour to arguments of this kind to enter into a formal refutation of them. It might easily be shewn, that the admitting a Grand Jury to find an indictment upon *probable* evidence, is in favour of the subject. Lord Chief Justice *Hale* puts a case <sup>k</sup>, which proves it beyond the possibility of question. And, waving the arguments dedu-

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cible

<sup>k</sup> If A. be killed by B. so that it doth *constare de persona occisi et occidentis*, and a bill of murder be presented to them, regularly they ought to find the bill for murder, and not for manslaughter, or *se defendendo*, because otherwise offences may be smothered without due trial; and when the party comes upon his trial, the whole fact will be examined before the court, and the petit Jury; and in many cases it is a great disadvantage to the party accused; for if a man kill B. in his own defence, or *per infortunium*, or possibly in executing the process in law upon an assault made upon him, or in his own defence upon the highway, or in defence of his house against those who come to rob him, in which three last cases it is  
neither

cible from the constant and uniform practice of Grand Juries under the direction of the wisest and ablest judges that have ever presided in our courts of justice, let it suffice to say, that in favour of the contrary opinion, we have no judicial determination, nor in short any thing deserving the name of authority whatsoever.

To this caution, respecting the nature of the evidence, which the law requires as the ground of your presentments, it may be necessary to add another touching your conduct in the course of your proceedings during your attendance on this court.

You will recollect, that by the oath you have just taken, you have severally engaged *the king's counsel, that of your fellows, and your own, well and truly to keep secret.* The meaning of which words is, that you  
are

neither felony nor forfeiture, but, upon not guilty pleaded, he ought to be acquitted; yet if the grand Inquest find *Ignoramus* upon the bill, or find the special matter whereby the prisoner is dismissed and discharged, he may, nevertheless, be indicted for murder seven years after. 2. *Hale's Hist. Placit. Coron.* 158.



are not to reveal the evidence of any of the witnesses that shall be produced to you, nor discover what you among yourselves shall have counselled, advised, or debated, in the business before you; such discoveries have been productive of great mischief, and may subject you to a severe punishment.

It was once a doubt with a very reverend and learned judge, whether the revealing the king's council, disclosed to the Grand Jurors, was not *treason*; <sup>1</sup> others have thought it to be *felony* <sup>m</sup>; and to set it at the lowest, Lord Chief Justice *Coke* says, that certain it is, that such discovery is accompanied with perjury, and a great *misprision*, to be punished by fine and imprisonment. <sup>n</sup>

These are the heads of your duty, in the discharge whereof you will do well to consider the obligations you are under, arising from the terms of your oath, the nature and ends of public justice, and the relation in which you at present stand to that community of which you are a part.

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<sup>1</sup> Lib. Ass. anno 27. Placit, 63. *George's case*.

<sup>m</sup> *Staundf.* 35.

<sup>n</sup> 3 Inst. 107.

The latter of these considerations will make you sensible of the error of those, who imagine, that freedom may exist in opposition to the laws. It will further teach you to reverence the constitution of your country ; and, lastly, convince you, that it is the indispensable duty of every one that participates in the blessings of it, to contribute his utmost towards its support, and to animate and invigorate those laws, which have for their ends the protection of property, the preservation of the public tranquility, and the diffusing among the people the blessings of peace and liberty.

F I N I S.



